

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

JOHN DOE 1 et al.,) CIVIL ACTION
) NO. PJM-21-356
Plaintiffs,)
)
v.)
)
MONTGOMERY COUNTY BOARD OF)
EDUCATION et al.,)
)
Defendants.)

TRANSCRIPT OF MOTIONS HEARING PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE
WEDNESDAY, MAY 3, 2023; 2:00 P.M.
GREENBELT, MARYLAND

APPEARANCES:

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COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES

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1 (Call to order of the court.)

2 THE COURT: Good afternoon, ladies and gentlemen.
3 Have your seats, please.

4 (Counsel reply, "Good afternoon, Your Honor.")

5 THE DEPUTY CLERK: The matter now pending before the
6 Court is Civil Action No. PJM-21-356, Doe 1 et al. v.
7 Montgomery County Board of Education et al. The matter now
8 comes before the Court for a continued motions hearing.

9 THE COURT: All right. Counsel, identify yourselves
10 first for Plaintiffs and then for Defendants.

11 MR. MALONEY: Good afternoon, Your Honor. Timothy
12 Maloney and Alyse Prawde in the gallery on behalf of John Doe
13 No. 4.

14 MR. RUFF: Good afternoon, Your Honor. Malcolm Ruff
15 on behalf of John Doe Plaintiffs 1 and 2.

16 THE COURT: I'm sorry. Malcolm Ruff?

17 MR. RUFF: Yes, Your Honor.

18 THE COURT: Oh, I'm sorry. Mr. Murphy, you are an
19 additional person so I lost the sequence here. Go ahead,
20 Mr. Ruff.

21 MR. RUFF: Thank you, Your Honor. Malcolm Ruff on
22 behalf of Doe Plaintiffs 1 and 2.

23 MR. MURPHY: And William H. Murphy, Jr. on behalf of
24 Doe Plaintiffs 1 and 2.

25 MR. DeGONIA: Good afternoon, Your Honor. Tom

1 DeGonia and Jerry Hyatt in the gallery on behalf of Doe No. 3.

2 THE COURT: And for the Defendants?

3 MS. KANE: Good afternoon, Your Honor. Patty Kane
4 and Jackie Allen at counsel table, with Meg Turlington in the
5 gallery, on behalf of the Defendants Board of Education,
6 Jeffrey Sullivan, Casey Crouse, Eric Wallich, and Vinny
7 Colbert.

8 MR. KARPINSKI: Good afternoon, Your Honor. Kevin
9 Karpinski on behalf of Defendant Joseph Doody.

10 THE COURT: Thank you, folks.

11 We are here today for me to render an oral opinion in
12 this case with respect to various motions for summary judgment
13 that have been filed. I am going to do something a little
14 unusual today, though, and it is the following, maybe taking a
15 page from the Supreme Court, more or less. I am going to
16 deliver an oral opinion, but as I prepared my notes with my law
17 clerk over the last several days, I have come very close to a
18 final written opinion, but it isn't quite what I want it to be.

19 What I do in many of these cases is give an oral opinion
20 in a case and then indicate what my board rule will be in the
21 case, and then I will say in the order, For the reasons stated
22 in the record, the Court orders as follows, and then the
23 official record is what the court reporter writes as to what I
24 say. And that will be the case here today.

25 I will say certain things, and whatever she types out is

1 going to be the official memorandum opinion in the case, and I
2 will indicate orally what the order will be and also that it
3 will be filed today or tomorrow with a written order which
4 effectively says, For the reasons stated on the record, the
5 Court orders thus and so.

6 Now, this is a somewhat different thing which I am
7 proposing to do. I got pretty far with my law clerk on this
8 opinion, but it's not quite what I want it to be officially.
9 On the other hand, it's not much less than what would be
10 transcribed by the court reporter today.

11 This is a complicated case with a lot of variations, and
12 I thought that I would do the following: After I have
13 delivered my oral opinion today, I am going to distribute
14 copies of my notes because I think it will give you a much
15 clearer idea of what's happening in this case. That is not the
16 official opinion in the case, but you will find, if you order
17 the transcript, and you should, that there is going to be a
18 very close connection between the two. Any inconsistency, it's
19 the way in which the court reporter transcribes it which is the
20 official record.

21 I don't know that I have done this before, but I don't
22 think there is any law against it, and it seems to me that it
23 will -- rather than having you try to follow everything that I
24 have said in a rather extensive case, this scorecard may help
25 you a bit in understanding where we are going.

1 So that's the background. I am not handing it out to you
2 before I give the opinion because I don't want you to be
3 reading it while I am talking, but I think if you follow it,
4 you will understand where I am going, and then we will see
5 where we come out.

6 MR. MURPHY: Your Honor, I have a question.

7 THE COURT: Well, I am not really going to entertain
8 any, Mr. Murphy, today.

9 MR. MURPHY: I just wanted to know if you were going
10 to pay for the transcript? It was a joke, Your Honor.

11 THE COURT: Oh, okay. Let's not joke, then, and
12 let's stay in order, if you will. I am not inviting comments
13 from counsel today. I don't want to be interrupted. My ruling
14 is my ruling. And whatever follow up you think you need, you
15 can follow, but I really ask counsel not to interrupt me when I
16 am speaking today.

17 As I said, the purpose of the hearing today is to deliver
18 an oral opinion with respect to various motions for summary
19 judgment. And the Court heard the following motions during
20 oral argument a few days back: They included Defendant Doody's
21 motion for summary judgment with respect to Doe Family No. 1,
22 ECF No. 222; Defendant Doody's motion for summary judgment with
23 respect to Doe Families 2, 3, and 4, ECF No. 223; and
24 Defendants Board of Education, Vincent Colbert, Casey Crouse,
25 Jeffrey Sullivan, and Eric Wallich's motion for summary

1 judgment as to John Doe, the first second amended complaint, at
2 ECF No. 227; and Defendants Board of Education, Vincent
3 Colbert, Casey Crouse, Jeffrey Sullivan, and Eric Wallich's
4 motion for summary judgment as to claims of John Does 2M, 3,
5 and 4M's claims, ECF No. 228.

6 Now, there are a few preliminary matters that I want to
7 address. First, with respect to the Parent-Plaintiffs and
8 whether they should remain in the case now that their children
9 have -- some of the children, some of the young Plaintiffs have
10 reached the age of majority.

11 The Court faced this issue once before with respect to
12 Doe No. 1. The Court held then that the Parent-Plaintiffs did
13 not have standing to bring claims in a representative capacity
14 on his behalf for alleged constitutional violations against --
15 that he claims occurred once he reached adulthood. And that
16 was at ECF No. 89 at pages 12 and 13.

17 The Court also held in that opinion that the
18 Parent-Plaintiffs did not have standing to pursue their own
19 claims for out-of-pocket expenses once their children reached
20 adulthood, but that, presumably, they could be pursued by the
21 adult children themselves.

22 But during oral argument recently on the motions for
23 summary judgments, Plaintiffs appeared amenable to dismissing
24 the remaining parents so long as Defendants would stipulate
25 that the now adult Does would be able to recover for any

1 pre-majority claims, and Defendants conceded they would be
2 agreeable to this.

3 And although the Court is inclined to dismiss all the
4 claims brought by the Parent-Plaintiffs at this time, Jane Doe
5 2, John Doe 4, and Jane Doe 4, for now, the Court is going to
6 hold off doing so. It's not really critical to deciding that
7 matter, and we will just leave it in place. The outcome, I
8 think, will not be different.

9 There are certain counts that are not before the Court on
10 summary judgment, which is to say they will move forward
11 irrespective of how the Court rules today.

12 Count One, negligence claims of Does 2 through 4 as to
13 all Defendants, have not been challenged on summary judgment.
14 They remain in the case whatever the Court might say.

15 Count Two, gross negligence, claims of Does 2 through 4
16 as to Defendant Sullivan, likewise remain in the case and have
17 not been challenged.

18 Count Three, gross negligence, claims of Does 2 through 4
19 as to Defendant Crouse, at this point, the Court has no
20 challenge to that claim.

21 As to Count Five, gross negligence, claims of Does 2
22 through 4 as to Defendant Wallich, also remain in the case.

23 And as to Count Six, gross negligence, claims of Does 2
24 through 4 as to Defendant Colbert, remain in the case.

25 There are certain other aspects of Defendants' various

1 motions for summary judgment that are unopposed by the
2 Plaintiffs, and, accordingly, summary judgment will be entered
3 as to those claims.

4 As to Count Eight, the 1983 claim against Defendant
5 Sullivan, the summary judgment claim is granted as to Defendant
6 Sullivan on Count Eight, the 1983 claim, as to Plaintiff Doe 1,
7 and with respect to Does 2 through 4, only with respect to the
8 state-created danger theory.

9 The Court will proceed to rule on the other aspect of
10 that claim when I get to the 1983 claim.

11 Count Nine is a 1983 claim against Defendant Crouse.
12 Summary judgment is granted to Defendant Crouse on Count Nine
13 as to the 1983 claim of Doe No. 1.

14 Count Ten, which is a 1983 claim against Defendant
15 Wallich, summary judgment is granted as to Defendant Wallich on
16 Count Ten, the 1983 claim, as to Does 1 through 4 with respect
17 only to the state-created danger theory at this point.

18 Again, these aspects of summary judgment are being
19 granted because they are unopposed by the Plaintiffs.

20 Now, having resolved those preliminary matters, the Court
21 proceeds with its opinion count by count. Just so you
22 understand, this will all be converted into the particular
23 motions that are before the Court, but as you know, I have
24 proceeded count by count, and it seems to me that's the easiest
25 way to discuss what we have before us.

1 First let's look at the summary judgment standard. The
2 Court shall grant summary judgment if the movant shows that
3 there is no genuine dispute as to any material fact and that
4 the movant is entitled to judgment as a matter of law, pursuant
5 to Federal Rule of Civil Procedure 56(a).

6 A genuine dispute is one where the evidence is such that
7 a reasonable jury could return a verdict for the non-moving
8 party. Here, the Court cites *Dulaney* at 673 F.3d 323 at 330, a
9 Fourth Circuit case from 2012.

10 A material fact is one that might affect the outcome of
11 the lawsuit given the relevant law. The Court here cites
12 *Erwin*, which is at 591 F.3d 313 at 320, a Fourth Circuit
13 opinion from 2010.

14 When considering a motion for summary judgment, the Court
15 views the record in the light most favorable to the non-moving
16 party and draws all reasonable inferences in his or her favor.
17 Again, pursuant to the *Dulaney* case, 673 F.3d 330.

18 We turn first, then, to Count One, negligence.

19 In the second amended complaint, all Plaintiffs have sued
20 all Defendants for negligence. That is Count One.

21 On summary judgment, Defendants have only challenged the
22 negligence claim of Doe 1 against them. Defendants do not
23 challenge the negligence claims of Does 2 to 4.

24 The elements of negligence are, first, that the Defendant
25 owed a duty to the Plaintiff; second, that the Defendant

1 breached that duty; third, that the Defendants' breach was a
2 direct and proximate cause of the Plaintiff's injury; and
3 fourth, that Plaintiff suffered some kind of harm.

4 It has been said that summary judgment is rarely
5 appropriate with respect to negligence claims. Here citing
6 *Spaulding*, 498 F.2d 517 at 518, a Fourth Circuit case from
7 1974.

8 Defendants do not dispute that Doe No. 1 suffered harm.
9 What they argue is that, first, they did not have a duty to
10 protect him from the criminal actions of other students;
11 second, even if they did have that duty, they did not breach it
12 because their conduct was reasonable given the information they
13 had at the time; and third, if they did breach a duty, such
14 breach cannot be a proximate and actual cause of criminal
15 actions by third parties.

16 Defendants concede that, as school officials, they had a
17 duty to Doe No. 1 because, as to him, they stood *in loco*
18 *parentis*, in the shoes of the parents. They argue that their
19 duty to Doe No. 1 was limited only to protect him against
20 foreseeable harms and that the sexual assault of Doe No. 1 by
21 other students was not foreseeable.

22 In Maryland, foreseeability is usually a jury question.
23 Here, *Goyal*, G-O-Y-A-L, at 2011 Westlaw 4380657 at page 3;
24 *Segerman vs. Jones* at 259 A.2d 794 at 806 from the Maryland
25 Court of Special Appeals.

1 The Court finds that there is a dispute of material fact
2 here as to whether Doe No. 1's injury was foreseeable to the
3 Defendants. Plaintiffs have cited evidence that the Montgomery
4 County Public Schools had a policy in place requiring
5 supervision of student athletes at all times, as well as a
6 mandatory program of training warning against the dangers of
7 hazing particularly in locker rooms. The Court finds that a
8 reasonable jury could conclude that it was foreseeable to
9 Defendants that their failure to supervise teenage boys in an
10 athletic locker room could lead to the physical assaults of the
11 kind that Doe No. 1 suffered.

12 As to whether Defendants breached that duty and whether
13 that breach was a cause of Doe 1's harm, these are also issues
14 that the Court finds should go to trial. As a general
15 proposition, in Maryland, the elements of breach and causation
16 typically do go to a jury. To this effect, *Hardesty*, 194 F.
17 Supp. 2d 447 at 450 from this district in 2002.

18 Looking at the specific facts of this case, there is a
19 dispute of material fact as to both breach and causation.
20 Plaintiffs have put forward evidence that the Defendants'
21 failure to supervise constituted a breach, and that it was both
22 a proximate cause and a cause in fact of Doe 1's assault.

23 Again, the Court does not find today that the Plaintiffs
24 have definitively proved their negligence case; only that there
25 is a sufficient factual dispute such that summary judgment is

1 inappropriate.

2 Accordingly, Defendants' motions for summary judgment as
3 to Doe No. 1's negligence claim are denied.

4 The Court turns to Count -- Counts Two through Six, which
5 are negligence claims -- gross negligence claims. And all
6 Plaintiffs have sued a number of Defendants for gross
7 negligence.

8 In Count Two, the Plaintiffs sue Defendant Sullivan,
9 district's athletic director; Count Three, they sue Principal
10 Crouse; Count Four, they sue Damascus High School Athletics
11 Coach Doody; Count Five, they sue Damascus High School's Head
12 Football Coach Wallich; and Count Six, they sue JV Football
13 Coach Colbert.

14 On summary judgment, Defendant Sullivan, Count Two,
15 Crouse, Count Three, Wallich, Count Five, and Colbert, Count
16 Six, challenge only the gross negligence claims of Doe No. 1.
17 They do not challenge the gross negligence claims of Does 2
18 through 4. But Defendant Doody, Count Four, challenges the
19 gross negligence claims of all Does, 1 through 4.

20 The standard for gross negligence in Maryland is whether
21 a defendant acted with wanton or reckless disregard for human
22 life, citing *Stracke*, S-T-R-A-C-K-E, at -- I don't have the
23 first part -- an A.3d case, 561 at 569. Generally, in
24 Maryland, gross negligence goes to the jury so long as
25 reasonable minds could disagree. To this effect, *Nero*,

1 N-E-R-0, at 890 F.3d 106 at 131, a Fourth Circuit case from
2 2018.

3 Here, too, the Court finds there is enough of a factual
4 dispute as to whether Defendants sued for gross negligence --
5 who are being sued for gross negligence acted with such wanton
6 or reckless disregard for the Plaintiffs' rights and lives that
7 they should be processed. The Court summarizes the critical
8 factual disputes as follows:

9 As to Count Two, Plaintiffs have presented evidence that
10 Defendant Sullivan, as director of system-wide athletics,
11 admitted in his deposition he was responsible for enforcing
12 rules, including mandatory training regarding hazing required
13 for school athletic departments. A reasonable jury could
14 conclude that Sullivan's alleged systematic failure to ensure
15 that athletic coaches took their training and appropriately
16 supervised the students as required, whether that amounts to
17 wanton or reckless disregard as to Doe No. 1.

18 As to Count Three, Plaintiffs have presented evidence
19 that Defendant Crouse admitted in her deposition that she knew
20 lack of supervision in the Damascus boys locker room could lead
21 to the kind of harm that Doe No. 1 suffered, and that her
22 allegedly repeated failure to ensure that coaches were
23 performing their supervisory duties amounted to reckless --
24 wanton or reckless disregard as to Doe No. 1.

25 With regard to Count Four, and this is the count as to

1 Defendant -- presented by Defendant Doody, the Court finds the
2 Plaintiffs have presented evidence including the following:
3 That Defendant Doody was responsible for implementing the
4 mandatory training and supervision policies at DHS being the
5 athletics director there, but that he failed to do so.

6 That Defendants Wallich and Colbert, subordinates of
7 Doody, said in their depositions that Doody never informed them
8 of their -- of the supervisory policy.

9 Next, that Defendant Doody failed to act when he received
10 complaints about lack of supervision.

11 Next, Doody had taken a training course that specifically
12 mentioned brooming as the form of attacks as a risk in an
13 unsupervised athletic locker room.

14 And further, that Defendant Doody knew that J.C.A., the
15 individual known as J.C.A., the student, posed a danger to
16 other students.

17 The Court finds that this is sufficient to create a
18 dispute of material fact as to whether Doody acted with wanton
19 or reckless disregard as to all Does.

20 As to Count Five, Defendants have presented evidence that
21 Defendant -- sorry -- Plaintiffs have presented evidence that
22 Defendant Wallich failed to supervise the JV football team for
23 years, that he admitted that he thought he did not need to
24 supervise the JV team, and that he may have failed to complete
25 a required training. These facts could lead a reasonable jury

1 to conclude that he acted with wanton or reckless disregard as
2 to Doe No. 1's safety and security.

3 As to Count No. Six, Plaintiffs have presented evidence
4 that Defendant Colbert failed to follow the school's
5 supervision policy and may have failed to complete a required
6 training. These facts could lead a reasonable jury to conclude
7 that he acted with wanton or reckless disregard as to Doe 1's
8 safety and security.

9 Accordingly, the motions for summary judgment of
10 Defendant Sullivan, Count Two, Defendant Crouse, Count Three,
11 Defendant Wallich, Count Five, and Defendant Colbert, Count
12 Six, as to Doe 1's gross negligence claims, are denied. In
13 addition, Defendant Doody's motion for summary judgment as to
14 all Does' gross negligence claims, Count Four, denied.

15 The Court turns to Count Seven, the Title IX claim.

16 All Plaintiffs have sued the Board of Education for Title
17 IX violations. This is Count Seven. And the Board has moved
18 for summary judgment with respect to all Plaintiffs' claims.

19 The Court will address the disputes on this count in the
20 order in which counsel for the Board presented them during oral
21 argument.

22 First, the Board argues that it is not liable for
23 punitive damages under Title IX, and, indeed, the Fourth
24 Circuit has instructed that punitive damages are not available
25 under that statute as it did in *Mercer vs. Duke University* at

1 50 Federal Appendix 643, 644, from the Fourth Circuit, 2002.

2 Accordingly, the Court grants summary judgment to the
3 Board to the extent that the Plaintiffs seek punitive damages
4 on Count Seven.

5 Second, the Board argues that emotional damages are not
6 available to Plaintiffs under Title IX pursuant to a recent
7 Supreme Court decision in *Cummings vs. Premier Rehab Keller,*
8 *PLLC*, at 142 Supreme Court 1562, a 2022 decision. In *Cummings*,
9 the Court held that damages for emotional distress are not
10 available for statutes adopted under the suspending -- the
11 spending clause. While Title IX was not directly at issue in
12 *Cummings*, the Board suggests that that holding applies to all
13 spending clause litigation, including the present action under
14 Title IX.

15 The Board may well be correct that *Cummings* prevents
16 Plaintiffs from recovering emotional distress damages on their
17 Title IX claim, but as Mr. Maloney pointed out during oral
18 argument, the applicability of *Cummings* to Title IX claims
19 specifically appears to be a rapidly moving landscape, with
20 various district courts reaching different conclusions.

21 In light of this rapidly moving landscape, the Court
22 finds it unnecessary to decide the *Cummings* issue on summary
23 judgment. Damages may, and often are, limited in various ways
24 after the jury renders its verdict, and the Court prefers to
25 revisit the *Cummings* question after trial, perhaps when the

1 case law about its applicability has been more fully developed.

2 But relatedly, the Court would make two points. First, a
3 jury typically does not award emotional damages per count; they
4 just enter one number on the verdict sheet, and, obviously,
5 there will be a verdict sheet in this case. Emotional distress
6 damages would be available both with respect to Plaintiffs'
7 negligence claims and with respect to gross negligence claims
8 against the Board. If the Board is found liable in both
9 negligence -- or either count of negligence, as well as for
10 Title IX violations, there would not be separate emotional
11 distress numbers reached. They would be the same.

12 Also, even if emotional damages are not available under
13 Title IX, that decision in *Cummings* says nothing about damages
14 available for the actual violation, the impact, if you will, of
15 the bodily integrity that occurs when there is a kind of
16 violation that occurred here, and that's not necessarily
17 emotional damages, so that, arguably, would be another
18 component to allow what, in effect, would be compensatory
19 damages under that count.

20 So while Plaintiffs may ultimately be barred from
21 recovering emotional damages for their -- with respect to their
22 Title IX claim, the Court has just expressed a distinction
23 between the moment of impact and emotional sequelae that might
24 also be involved.

25 Accordingly, the Board's motion for summary judgment as

1 to emotional distress damages under Title IX, Count Seven, is
2 denied without prejudice.

3 The Court turns, however, to some of the evidence with
4 respect to the Title IX claim that has been brought into
5 question.

6 The elements of a Title IX claim under -- and this Court
7 is basing this on *Jennings vs. University of North Carolina* at
8 482 F.3d 686 at 695, a Fourth Circuit decision from 2007 --
9 first, that the Plaintiff was a student in an educational
10 institution receiving federal funds; second, if the student was
11 subjected to harassment based on sex; third, that the
12 harassment was sufficiently severe or pervasive to create a
13 hostile or abusive environment in an educational program or
14 activity; and fourth, that there is a basis for imputing
15 liability to the institution.

16 At oral argument, the Board's first merits-based argument
17 addressed the fourth element, whether there was a basis for
18 imputing liability to it. An institution can be held for --
19 liable for a Title IX violation only if an official who has
20 authority to address the alleged discrimination and to
21 institute corrective measures has actual knowledge of the
22 discrimination in the institution's programs and fails
23 adequately to respond or displays deliberate indifference to
24 discrimination. That, again, is from *Jennings*, citing *Gebser*,
25 G-E-B-S-E-R, from the Supreme Court, 524 U.S. 274, 290.

1 The Court then first considers the element of appropriate
2 person.

3 The Board's merits arguments as to Title IX begin with
4 the proposition that only Defendant Crouse and no other school
5 official, which would include Defendants Sullivan, Doody,
6 Wallich, and Colbert, were appropriate persons, but allowing
7 that Defendant Crouse might be.

8 An appropriate person is, at a minimum, an official with
9 authority to take corrective action to end the discrimination.
10 This is the *Gebser* case just cited by the Court, 524 U.S. 274
11 at 290.

12 Defendants argue that only Crouse can be considered an
13 appropriate person because she is the only one who had
14 authority to hire, fire, or discipline a personnel responsive
15 to the discrimination.

16 The Defendants' view of appropriate person appears to
17 derive from the Fourth Circuit case of *Bayard* [sic] at 268 F.3d
18 228 at 239, Fourth Circuit, 2001.

19 But the Court finds that more recent Fourth Circuit law
20 suggests that *Baynard* -- I said *Bayard*, it's *Baynard* -- that
21 definition may be too narrow. In the *Jennings* case, the Fourth
22 Circuit appeared to abandon its bright line rule that an
23 appropriate person is only an official who can hire, fire, and
24 discipline in favor of a more fact-intensive inquiry of the
25 official's actual authority and extent of notice of the

1 discrimination. This would be in *Jennings*, 482 F.3d 686 at 700
2 from the Fourth Circuit, 2007.

3 At a minimum, taking *Baynard* and *Jennings* together, the
4 Court believes it demonstrates that the question of who has the
5 power to take corrective action is fact-specific and
6 inappropriate for resolution on summary judgment.

7 And that being said, the Court believes that a jury could
8 reasonably conclude, under *Jennings*, that other school
9 officials had authority to take corrective action because they
10 could, for example, remove or discipline players on the
11 football team.

12 The Court also raises an estoppel concern. School
13 students are told -- students are told by the school to report
14 sexual harassment to school staff or the principal. If the
15 Court were to adopt Defendants' position, that would mean that
16 students who suffered sexual harassment or abuse and relied on
17 school policy simply to report it to a teacher could be denied
18 a Title IX claim because they had not made the report to an
19 appropriate person. This would not be a particularly
20 satisfactory result. In any event, the Court does not accept
21 that only -- at this juncture anyway -- Defendant Crouse would
22 be an appropriate person.

23 The next concept under Title IX is actual notice.

24 The Board argues that Defendant Crouse, or anyone else
25 who might be an appropriate person, could -- they argue that

1 they did not have actual notice of the harms Plaintiffs
2 suffered.

3 The Board's chief argument on this point is that actual
4 notice for Title IX purposes requires that the appropriate
5 person have the name of the victim and/or the assailant. The
6 Court disagrees.

7 The Fourth Circuit has previously explained that the
8 standard for actual notice is met when an appropriate official
9 is alerted to the possibility of misconduct that a reasonable
10 person would construe as prohibited by Title IX. The Court, in
11 this regard, cites *Doe vs. Fairfax County School Board*, 1 F.4th
12 257 at 266-68 from the Fourth Circuit, 2021.

13 Davis 1 -- excuse me. Doe 1 concedes that the Board may
14 not have had actual notice of prior brooming incidents before
15 his assault. But that does not foreclose his Title IX claim.
16 Doe 1's counsel has cited evidence that locker room assaults
17 were a known risk to school officials prior to August 2017.
18 And by November 2017, Crouse and other officials at the school
19 had been informed of Doe 1's assault, and that their failure to
20 ask for names of the victim and perpetrator, to investigate
21 further, or take other action amounted to deliberate
22 indifference. And all the while Doe 1 was taunted and
23 threatened by teammates and other students in a way that
24 arguably interfered with his educational opportunities.

25 As to Does 2 through 4, their proof of actual notice is

1 stronger. To summarize, they have offered the following
2 evidence:

3 By November 2017, Plaintiff Principal Crouse -- excuse
4 me, Defendant Principal Crouse and others were aware of Doe 1's
5 assault. In September 2018, officials were informed the
6 players were getting threatened with brooms and poked in the
7 buttocks. Next, the Board apparently had knowledge of at least
8 one report of brooming or other sexual assaults in locker rooms
9 in other high schools prior to October 31, 2018. Defendant
10 Crouse was informed of, or was deliberately indifferent to, so
11 the evidence might suggest, multiple reports of actions by the
12 student J.C.A., who was one of the assault perpetrators, his
13 history of posing a danger to other students.

14 The Court is satisfied that all Doe Plaintiffs have
15 raised a factual dispute as to whether any appropriate person
16 had actual notice of Title IX misconduct in this case.

17 With regard to the deprivation of educational
18 opportunities, the Board challenges that Does 1 and 2 have not
19 shown they were deprived of access to educational opportunities
20 or benefits because they did not change schools, they did not
21 -- that they continued playing football, and that they
22 graduated on time.

23 A sexual harassment or assault victim can be said to have
24 been deprived of access to educational opportunities or
25 benefits in several respects, including when the harassment

1 results in the physical exclusion of the victim from an
2 educational program or activity; when the harassment so
3 undermines and detracts from the victim's educational
4 experience as to effectively deny them equal access to an
5 institution's resources or opportunities; or three, where the
6 harassment has a concrete, negative effect on the victim's
7 ability to participate in an educational program or activity.
8 To this effect, the Court cites *Jennings*, 482 F.3d at 699.

9 Based on what the record suggests about how Does 1 and 2
10 experienced a variety of severe anxiety symptoms and suffered
11 negative effects as to their grades and social lives, the Court
12 is satisfied there is a question of material fact here as to
13 whether Does 1 and 2 have shown sufficient deprivation,
14 particularly under either the second or third theories from
15 *Jennings*.

16 As such, then, the Court rules that the Board of
17 Education's motion for summary judgment on the merits of
18 Plaintiffs' Title IX claim, Count Seven, is denied.

19 The Court turns to Counts Eight through Ten, which are
20 claims under 42, U.S.C., Section 1983.

21 All Plaintiffs have brought 1983 claims against Defendant
22 Sullivan, Count Eight, Defendant Crouse, Count Nine, and
23 Defendant Wallich, Count Ten. They are all sued in their
24 individual capacities.

25 At the beginning of the present opinion, the Court

1 granted summary judgment to the Defendants to the extent that
2 their motions were unopposed. That leaves the following
3 portions of summary judgment that the Court now must resolve:

4 First, as to Count Eight, Does 2 -- Does 2 through 4
5 oppose summary judgment against Sullivan on the supervisory
6 liability theory. As to Count Nine, Does 2 through 4 oppose
7 summary judgment in favor of Defendant Crouse on both the
8 state-created danger and supervisory liability theories. And
9 as to Count Ten, all Does, 1 through 4, oppose summary judgment
10 in favor of Defendant Wallich on the supervisory liability
11 theory.

12 Before considering the two theories under which
13 Plaintiffs sue, the Court considers a question that came up
14 during oral argument. Counsel for Defendants suggested that
15 Plaintiffs' 1983 claims have been brought pursuant to *Mone11*
16 *vs. Department of Social Services of the City of New York*, 436
17 U.S. 658, a '78 case from the Supreme Court. A *Mone11* claim is
18 one brought for monetary recovery against a local municipality
19 where officials have acted unconstitutionally pursuant to local
20 law, policy, or custom.

21 This is not a *Mone11* claim. It is a claim brought
22 against Defendants in their individual capacities for policies
23 that they either failed to implement -- that they failed to
24 follow or they failed to implement. So the Court, therefore,
25 rejects any suggestion that this is a masqueraded *Mone11* claim.

1 Let me look at the two aspects of the 1983 claims that
2 have been further discussed. First is the state-created danger
3 theory, that is, that somehow Defendant Crouse particularly
4 created a danger that should be actionable. It is -- this
5 claim is only as to Does 2 through 4.

6 To establish Section 1983 liability based on a
7 state-created danger theory, a plaintiff must show that the
8 state actor created or increased the risk of private danger and
9 did so through affirmative acts, not merely through inaction or
10 omission. To this effect, *Doe vs. Rosa*, 795 F.3d 429 at 439
11 from the Fourth Circuit, 2015.

12 Here, the parties generally disagree about what Defendant
13 Crouse did in terms of her conduct. What they dispute is
14 whether that conduct should be considered an affirmative act or
15 merely an omission.

16 For example, the parties agree that the football team was
17 not in study hall as they had been, but they do not see eye to
18 eye on whether this was a result of Crouse's omission, on the
19 one hand, that is, her failure to do anything to reimpose study
20 hall, or if Crouse took affirmative action to cancel the study
21 hall. These are philosophical arguments which the Court really
22 can't resolve at this point. But certainly, arguably,
23 terminating a policy and not putting it in place could be
24 considered omission, but it's also an affirmative act. It's
25 not the kind of thing on which responsibility and

1 accountability would rest. For present purposes, it certainly
2 would suffice as an affirmative act.

3 Likewise, there is a disagreement under this count as to
4 causation, whether Crouse's conduct, like cancelling study hall
5 or removing the interventions put in place to monitor J.C.A.,
6 the problematic student who was a perpetrator, whether that
7 created or enhanced danger to Does 2 through 4 with respect to
8 possible assaults.

9 In the Court's view, these questions cannot be decided as
10 a matter of law. Each side has cited its own plausible facts
11 as to why their conclusions should be given credit.

12 But the Court now denies counsel's motion for summary
13 judgment, Count Eight, that is the 1983 claim, with regard to
14 the state-created danger theory advanced by Does 2 through 4.

15 The second aspect under 1983 is the supervisory liability
16 claim. And here, Plaintiffs make the supervisory liability
17 claim for applicability of the 1983 claim. In Count Eight,
18 Does 2 through 4 as to Defendant Sullivan; Count Nine, Does 2
19 through 4 as to Defendant Sullivan; Count Ten, all Does, 1
20 through 4, as to Defendant Wallich.

21 To recover under a theory of supervisory liability, the
22 Plaintiff must establish the following elements:

23 One, the supervisor had actual or constructive knowledge
24 that his subordinate was engaged in conduct that posed a
25 pervasive and unreasonable risk of constitutional injury to

1 citizens like the plaintiff; second, that the supervisor's
2 response to that knowledge was sufficiently inadequate so as to
3 show deliberate indifference to, or tacit authorization of, the
4 alleged offensive practices; and third, that the affirmative
5 causal link between the supervisor's inaction and the
6 particular constitutional injury existed and was suffered by
7 Plaintiff. To this effect, the Court cites *Shaw v. Stroud*, 13
8 F.3d 791 at 799, a Fourth Circuit case from 1994.

9 Defendants Sullivan, Crouse, and Wallich raise three
10 primary challenges on this point. First, they posit that
11 Sullivan and Wallich were not supervisors because they did not
12 have subordinates. They do concede that Crouse was a
13 supervisor.

14 Second, they say that Principal Crouse and Defendants
15 Sullivan and Wallich, to the extent the Court finds they were
16 supervisors, had no actual or constructive notice that the
17 manner in which a subordinate employee supervised the football
18 players posed a pervasive or unreasonable risk of
19 constitutional injury, and that even if it did, they did not
20 act with deliberate indifference such that they should be held
21 liable.

22 And third, the Defendants argue that this theory is not
23 applicable because violations of the constitutional rights were
24 perpetrated by private actors, students, who do not have a
25 supervisor/subordinate relationship with the individual

1 Defendants.

2 The Court considers each argument in turn.

3 As to whether Defendants Sullivan and Wallich were a
4 supervisor, the Court finds that this is a question of fact
5 about which there is a material dispute. Defendants'
6 perspective is a formal one. They say Sullivan and Wallich
7 were not supervisors based on their job descriptions and
8 relative locations in the district hierarchy. For their part,
9 Plaintiffs have cited evidence that Defendants Sullivan and
10 Wallich, in fact, were supervisors.

11 Sullivan admitted in his deposition he had oversight over
12 athletics and the ability and authority to discipline others,
13 particularly by certifying coaches or decertifying them,
14 preventing them from continuing to coach if they failed to take
15 mandatory training. And, again, this is mandatory training
16 with regard to such things as hazing.

17 And that also Defendant Wallich was the head football
18 coach at Damascus and had responsibility for delegating tasks
19 to JV Coach Colbert.

20 The factual dispute over whether Defendants Sullivan and
21 Wallich can be considered supervisors is material. It cannot
22 be decided on summary judgment. And with that in mind, the
23 Court is not going to grant summary judgment as to that theory.

24 Defendants then argue that Defendants Sullivan, Crouse,
25 and Wallich had no actual or constructive notice that the

1 manner in which a subordinate employee was acting or failing to
2 act posed a pervasive or unreasonable risk of constitutional
3 injury to Plaintiffs, and that even if they did, their actions
4 were not deliberately indifferent such that they should be held
5 liable.

6 There are also material disputes of fact on this point
7 that the Court believes preclude summary judgment.

8 Plaintiffs have cited evidence that Defendant Crouse knew
9 of the risk that J.C.A. posed to other students but that she
10 failed to ensure that Wallich and/or Colbert were adequately
11 supervising him. Further, Plaintiffs suggest that prior to
12 October 31, 2018, the date of the assaults, that Sullivan was
13 aware of the brooming assault on Doe No. 1 but failed to ensure
14 that adequate supervision by the Damascus coaches had been --
15 was in place, or that the coaches had completed the required
16 training as to actions in the locker rooms.

17 And further, Wallich knew or should have known, according
18 to Plaintiffs, that Colbert was not providing adequate
19 supervision in the locker room both in August 2017, as to Doe
20 No. 1, and on October -- in October 2018 as to Does 2 through
21 4.

22 Based on these facts, among others, a reasonable jury
23 could conclude that Defendants Crouse, Wallich, and/or --
24 Crouse, Sullivan, and/or Wallich had notice that subordinate
25 employees were failing to supervise and/or complete mandatory

1 training on hazing, and that their responses to this notice was
2 deliberately indifferent.

3 Finally, the argument made by Defendants Crouse,
4 Sullivan, and Wallich is that supervisory liability, that
5 theory, is not applicable to them because other students
6 committed the assaults and Defendants did not have a
7 subordinate/supervisor relationship with those students.

8 The Court believes, candidly, Defendants have
9 misunderstood and misstated the standard for supervisory
10 liability.

11 Defendants do not need to show that -- need not have
12 conducted the assault themselves in order to be liable under
13 this theory. It is sufficient if they participated in any
14 conduct, quote, that posed a pervasive and unreasonable risk of
15 constitutional injury to citizens like the plaintiff, end
16 quote.

17 And in this case, then, the question is not whether the
18 subordinates, themselves, perpetuated the sexual acts, but
19 whether the subordinates' failure to supervise the locker room,
20 among other alleged conduct, created a pervasive or
21 unreasonable risk of constitutional injury.

22 And viewed in this light, the question of whether
23 Defendants' alleged conduct rises to the actionable level under
24 the supervisory liability theory is one for a fact finder to
25 decide.

1 Accordingly, the Court would, as to Sullivan's motion for
2 summary judgment as to Count Eight, the supervisory liability
3 theory brought by Does 2 through 4, is denied; that is,
4 Defendants' motion in that respect is denied.

5 As to Defendant Crouse's motion for summary judgment as
6 to Count Nine, again, the motion that challenges supervisory
7 liability as brought by Does 2 through 4, is denied.

8 With regard to Defendant Wallich's motion for summary
9 judgment as to Count Ten, the supervisory liability theory as
10 brought by Does 1 through 4, is denied.

11 There is the matter of qualified immunity that has been
12 raised by the Defendants.

13 Defendants Sullivan, Crouse, and Wallich also argue that
14 to the extent any of the 1983 claims against them would
15 otherwise survive, they are entitled to qualified immunity
16 because it was not clearly established either in 2017 or '18
17 that the constitutional right Plaintiffs accuse them of
18 violating existed, nor was it clearly established that their
19 conduct violated that right.

20 The doctrine of qualified immunity shields officials from
21 civil liability so long as their conduct does not violate
22 clearly established statutory or constitutional rights of which
23 a reasonable person would have known. This according to
24 *Pearson* at 555 U.S. 223 at 231, a 2009 case from the Supreme
25 Court.

1 A clearly established right is one that is sufficiently
2 clear that every reasonable official would have understood that
3 what he or she is doing violates that right, again citing to
4 the Supreme Court, *Reichle*, R-E-I-C-H-L-E, 566 U.S. 658 at 664,
5 a 2012 case.

6 Defendants argue that the constitutional right at issue
7 in this case is more specific than the right to be free of
8 physical assault. Instead, they zero in on the so-called right
9 to be free from deliberate indifference from school officials
10 as to student-on-student sexual harassment, a right they doubt
11 even exists today, and one they say certainly was not clearly
12 established in 2017 and '18. Plaintiffs, of course, dispute
13 this narrowing, urging the Court to focus more broadly on the
14 right to be free from physical assault.

15 The Court believes the Defendants are splitting
16 nonexistent hairs. Certainly, in 2017, '18, it was well
17 established that Plaintiffs had a fundamental right to bodily
18 integrity, including the right to be free from physical
19 assault. In this sense, it's immaterial whether the assault
20 here was sexual in nature. At its core, it was a physical
21 assault. And the Court, in this respect, cites *Ingraham vs.*
22 *Wright* at 430 U.S. 651, 673 to 674, and *Jones vs. Wellham* from
23 the Fourth Circuit in 1997, 104 F.3d 620, 622. It was well
24 established that school officials owed a special duty of care
25 to their students, with regard to the safety and security of

1 their students, as *in loco parentis*. The Court is satisfied
2 that in 2017 and 2018, there is evidence that Defendants were
3 fairly on notice, that -- that they were indifferent to the
4 possibility of locker room assault, among other conduct, and
5 that it could result in constitutional violations.

6 Accordingly, the motions of Defendants Sullivan, Crouse,
7 and Wallich for summary judgment as to qualified immunity on
8 the 1983 claims are denied.

9 The Court speaks now to damages.

10 Separately Defendants Sullivan, Crouse, and Wallich argue
11 they should not be liable for punitive damages on the 1983
12 claims.

13 The standard for punitive damages under 1983 is whether a
14 defendant acted with reckless or callous indifference to the
15 federally protected rights of others. To this effect, *Smith*
16 *vs. Wade*, 461 U.S. 30 at 56, a 1983 case from the Supreme
17 Court.

18 Again, the Court has already acknowledged in the context
19 of other counts that there is a material dispute of fact here.
20 Plaintiffs have put forward evidence that a reasonable jury
21 could conclude that reckless or callous indifference occurred
22 here, such as Defendant Sullivan's failure to ensure that
23 coaches completed mandatory hazing -- mandatory training as to
24 hazing and that they adequately supervised the locker room even
25 though he knew of multiple prior assaults at Damascus and,

1 indeed, at other high schools in his district.

2 Plaintiffs also cite Plaintiff [sic] Crouse's failure to
3 monitor adequately the actions of J.C.A. who posed a known
4 threat to other students.

5 And finally, that Wallich's failure to ensure adequate
6 supervision of the locker room also posed a risk, knowing the
7 risk that the individual J.C.A. posed.

8 Accordingly, the motions for summary judgment as to
9 Defendant -- filed by Defendants Sullivan, Crouse, and Wallich
10 as to punitive damages on the 1983 claim are denied.

11 There is, then, the matter of injunctive relief.

12 Finally, the Plaintiffs argue -- excuse me. I am getting
13 a little confused here and my voice is dropping. Defendants
14 argue that Plaintiffs cannot pursue injunctive relief against
15 them because they lack standing. They, presumably, will not --
16 are not any longer in the school such as they would be -- would
17 suffer immediate injury.

18 It is true that granting injunctive relief is proper
19 where Plaintiff demonstrates that he will suffer injury in
20 fact, which is concrete and particularized, actual and
21 imminent, not conjectural or hypothetical. To this effect, the
22 Court cites *Proctor* at 32 F. Supp. 2d 830 at 832 from this
23 district, 1998.

24 Defendants argue that Plaintiffs no longer have standing
25 because they will never again attend Damascus, and, therefore,

1 are no longer at the risk of future harm.

2 But this is a classic example of the exception to the
3 general rule, where a claim for injunctive relief is capable of
4 repetition, but evading review. To this effect, *Sosna*,
5 S-O-S-N-A, vs. *Iowa* at 419 U.S. 393 at 402, n.11, a 1975 case
6 from the Supreme Court; and *County of Riverside vs. McLaughlin*
7 at 500 U.S. 44 at 52, a 1991 case from the Supreme Court.
8 Plaintiffs' time at Damascus would be limited to four years,
9 but litigation on these types of claims regularly, and in this
10 case, in the Court's view, have lasted much more than that.

11 That, then, constitutes the Court's oral opinion in the
12 case, and, therefore, the Court will announce its specific
13 rulings, summarizing them, will issue a written order
14 implementing its rulings today or tomorrow.

15 The claims of Parent-Plaintiffs Jane Doe 2, John Doe 4,
16 and Jane Doe 5 are dismissed.

17 Defendant Doody's motion for summary judgment with
18 respect to Doe Family No. 1, ECF 222, denied in its entirety.

19 Defendant Doody's motion for summary judgment with
20 respect to Doe Families 2, 3, and 4, ECF 223, denied in its
21 entirety.

22 Board of Education, Vincent Colbert, Casey Crouse,
23 Jeffrey Sullivan, and Eric Wallich's motion for summary
24 judgment as to John Doe 1 in its second amended complaint is
25 granted in part and denied in part.

1 First, the motion is granted as to Doe No. 1's 1983 claim
2 in Count Eight against Defendant Sullivan; Count Nine,
3 Defendant Crouse; on the state-created danger theory only in
4 Count Ten as to Defendant Wallich -- sorry. Let me be clear
5 about this. Let me restate that because I am still on the
6 Defendants' multiple motion regarding the 1983 claim.

7 As to Doe 1's 1983 claim on Count Eight as to Sullivan,
8 granted. And as to -- I must say, I am confused. We are not
9 dismissing the entire count. Just on these two theories. Let
10 me go back on this because I am not transcribing this
11 correctly.

12 It's granted insofar as the unopposed claim against
13 Defendant Sullivan in Count Eight, and as to Doe 1 and Does 2
14 and 4 on the state-created danger theory only. It is not an
15 entire ruling against that count.

16 And in Count Ten, as to Wallich, likewise, as to the
17 state-created danger theory only.

18 And to the extent that any damages are sought in a
19 punitive nature on Title IX, that part is granted.

20 The motion, then, under ECF 227, is denied without
21 prejudice with respect to Doe 1's claims for emotional distress
22 on Count Seven, Title IX; and then the motion is denied as to
23 Doe 1's claim of negligence on Count One against the Board,
24 Sullivan, Crouse, Wallich, and Colbert; Doe 1's claims of gross
25 negligence, Counts Two against Sullivan, Three against Crouse,

1 Five against Wallich, and Six against Colbert; as to Doe 1's
2 Title IX claim, Count Seven; as to Doe 1's 1983 supervisory
3 liability claim as to Wallich, Count Ten; and as to Doe 1's
4 demand for punitive damages on his gross negligence claim,
5 Counts Two, Three, Five, and Six, and for his 1983 claim, Count
6 Ten; Doe 1's demand for injunctive relief also, the motion is
7 denied.

8 As to the motion for summary judgment of Defendants
9 Board, Colbert, Crouse, Sullivan, and Wallich as to John Does
10 2M, 3, and 4M claims at ECF 228, that motion is granted in part
11 and denied in part. The motion is granted with respect to the
12 state-created danger theory that is posed against Defendant
13 Sullivan in Count Eight and against Defendant Wallich in Count
14 Ten; also to the extent that the punitive damages are demanded
15 for the Title IX claim, the Court having said that punitive
16 damages are not recoverable under Title IX.

17 The motion with respect -- we are back now on the motion
18 to the claims for emotional distress under Count Seven. The
19 Court has held that the motion is denied as to Doe 2 through
20 4's claims of negligence, Count One, against the Board,
21 Sullivan, Crouse, Wallich, and Colbert; as to Doe 2 -- excuse
22 me. This was as to Doe 2 through 4. It's -- as to the claim
23 of negligence, Count One, it's denied.

24 This is the motion against the Board, Sullivan, Crouse,
25 Wallich, and Colbert, Does 2 through 4's claims of gross

1 negligence against Sullivan, Count Two, Crouse, Count Three,
2 Wallich, Count Five, Colbert, Count Four, denied.

3 The motion as to Doe 2 through 4's Title IX claim, Count
4 Seven, denied.

5 The motion as to Doe 2 through 4's 1983 claims pursuant
6 to the supervisory liability theory only, Counts Eight,
7 Sullivan, Nine, Crouse, and Ten, Wallich, denied.

8 Count [sic] 2 through 4's 1983 claims pursuant to the
9 state-created danger theory, Count Nine, as to Crouse, denied.

10 Doe 2 through 4's demands for punitive damages based on
11 their gross negligence claims, Counts Two through Six, and the
12 1983 claims, Eight Through Ten, are denied.

13 And Doe 2 through 4's demand for injunctive relief,
14 denied.

15 Now, I think I got it all out there. We will give you
16 the papers, and you can take them home tonight and read them
17 and see whether you have any serious issues, but as far as the
18 Court is concerned, it is prepared to enter an order, with
19 perhaps a little more clarity than I spoke at the end there,
20 based on the opinion that it renders now.

21 Again, just to remind, we are going to hand out to you
22 now copies of the Court's notes. It is -- they are not
23 official. What is official is what the Court has said to the
24 court reporter, and I did a little bit of editing as I went
25 along. So, I don't think I substantively changed anything, but

1 this will help you I think grasp where the Court is.

2 There are -- are there any non-humorous comments anyone
3 would like to make?

4 MR. MALONEY: Your Honor, in view of the Court's
5 rulings, from a scheduling perspective, what happens next?

6 THE COURT: Well, how do you feel about discovery?
7 Are you done? Are we all done on discovery?

8 MS. KANE: No, Your Honor.

9 THE COURT: You are saying no?

10 MS. KANE: No, we are not. The Defendants had
11 reserved two hours each for the Plaintiffs on their -- their
12 condition between the time when they had been deposed
13 previously and the time of trial, so theirs still need to be
14 scheduled and taken. The Court had authorized that.

15 THE COURT: Well, you know, this is a case where I am
16 perfectly willing to work with counsel in terms of what fits
17 your needs in the case. So if you think there is further
18 discovery -- I mean, that's where you are, really. You need to
19 complete your discovery. And then we need to -- I think we
20 should book you in for a trial date soon, and that will give
21 you a bookend there to make you get things done. I don't
22 anticipate any other motions short of perhaps some in limine
23 motions before trial, but even then, I don't know.

24 I think it should be pretty clear what the roadmap is at
25 this point. Why don't counsel consult --

1 MR. MALONEY: Very well.

2 THE COURT: -- see what amount of time you need, and I
3 think -- I might just sort of pose this to you now: What kind
4 of trial time do you think you need? Do you need three weeks
5 for this?

6 MR. MALONEY: That's our thinking.

7 THE COURT: Three weeks?

8 MS. KANE: Probably four, Your Honor.

9 THE COURT: Well, I'd probably be looking for a trial
10 in February. We will just set aside the month of February, and
11 that will give you a bookend on that to make you sort of get
12 your act together and get things done. But you need to submit
13 something to the Court before that and tell me where you are
14 going to end discovery, we will bookend a pretrial conference
15 probably sometime in the first part of January, and between now
16 and then, I don't anticipate that there would be much that I
17 would see you in court over. It seems unlikely.

18 And, of course, you know, looking down the road -- I
19 mean, I will give you when we sit at our pretrial conference --
20 this is the kind of situation where I would, obviously, expect
21 a special verdict sheet, and you need to think about that in
22 the meantime, and appropriate voir dire, which I will tell you
23 I want to be joint, appropriate instructions, which I hope that
24 you can work on jointly, and when you disagree, use the same
25 number -- I will say all this in my pretrial order to you --

1 but that's where you work together and try and get the same
2 agreement as to the appropriate instructions, and then we will
3 have a pretrial conference to see where we are.

4 MR. MALONEY: Your Honor, we will confer jointly with
5 counsel and maybe give the Court a joint status report by
6 Monday.

7 THE COURT: Well, right. And then I think we have to
8 book in, according to our schedule, when you can come in for --
9 indicate as well, when you get back to me, if we save the whole
10 month of February, which is I think pretty much clear for me
11 now -- you won't be here so you don't know really.

12 MS. HANNIBAL: When we talked about it, you said we
13 were looking at January, February, and March.

14 THE COURT: Well, January, I just booked in another
15 long trial. I think you need to tell us --

16 MR. MALONEY: Your Honor, one issue I raised, and it
17 may be something that can't be fixed, a number of the Plaintiff
18 students are now college students, and, of course, maybe they
19 won't be able to come. I don't know if the Court has any
20 availability in January, or maybe not.

21 THE COURT: For? Sorry. Oh, for -- I just booked in
22 a rather long trial for January where everybody is telling me
23 that it should have been done either next month or in 2025.

24 MR. MALONEY: Well, let us confer.

25 THE COURT: See where you are on that.

1 MS. KANE: We need to confer with our clients as
2 well, Your Honor, as to the dates.

3 THE COURT: Right. And then, of course, I say, as I
4 always do in these cases, if you want to refer the matter to a
5 magistrate judge for settlement discussions, I can do that.

6 MR. MALONEY: Thank you. We have had mediation
7 discussions with Judge Connelly who is still involved in the
8 case.

9 THE COURT: He is?

10 MR. MALONEY: He is.

11 THE COURT: Okay. Good enough.

12 All right, folks. Anything else?

13 Lindsay will give out as many copies as we have there.
14 Is the press here at all? Make sure that -- make sure she has
15 a copy and then make sure that there are enough.

16 Okay. All right, folks.

17 (The proceedings were concluded at 3:11 p.m.)
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C E R T I F I C A T E

I, Renee A. Ewing, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings taken on the date and time previously stated in the above matter; that the testimony of witnesses and statements of the parties were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Renee A Ewing

Renee A. Ewing, RPR, RMR, CRR
Official Court Reporter
May 4, 2023

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